

REMARKS

The Office Action contained one rejection of the claims under 35 USC §102 and one rejection of the claims under 35 USC §103. Each will be responded to below.

a. Response to §102 Rejection

Claims 1-12 and 18-27 were rejected under 35 USC §102(b) as being anticipated by Larsen (U.S. 5,679,419). Applicant respectfully traverses the rejection.

Applicant's independent claims 1 and 18 each require a transverse wall portion that is configured to permit the sidewall portions to move alternately towards and away from one another in response to forces exerted by the glass panes. As is explained in Applicant's specification, this allows the effective width of the transverse wall to alternately decrease and increase so as to reduce the tendency of the panes to develop a pivoting action against the sides of the tubing. In the preferred embodiment this is accomplished by a seam structure that permits first and second web portions of the transverse wall to move towards and away from one another, as required by dependent claims 2 and 19 and their dependents.

Larsen does not show a transverse wall portion that is configured to permit the sidewall portions to move alternately towards and away from one another as required by Applicant's claims. Instead, Larsen's transverse wall portions (22,24) are welded together (e.g., see col. 5, lines 2-6, 19-22) and therefore cannot move towards and away from one another. Furthermore, the interior of the spacer tube is packed with crush-resistant desiccant that further prevents any inward deflection (e.g., see col. 6, lines 36-40).

Moreover, it would not be obvious to modify Larsen to use a transverse wall portion configured to permit the sidewall portions to move towards and away from one another, since it is an express purpose of Larsen to increase transverse compressive strength in the interest of crush resistance.

Larsen also fails to show the seam structure, overlapping tabs having a sliding interfit, and other features that are required by Applicant's dependent claims.

In order to anticipate a claim, the reference must teach every element of the claim (MPEP 2131). As stated above, Larsen does not teach spacer frame tubing having a transverse wall portion that is configured to permit the sidewall portions to move alternately towards and away from one another and therefore fails to anticipate Applicant's claims. Applicant therefore respectfully requests that the rejection of the claims under 35 USC §102 be reconsidered and withdrawn.

b. Response to §103 Rejection

Claims 13-17 and 28-33 were rejected under 35 USC §103(a) as being unpatentable over Larsen in view of Peterson (U.S. 5,581,971) and Taylor (U.S. 5,461,840). Larsen was cited as the primary reference showing the structural elements of the spacer. Peterson was cited as showing a spacer bar having projecting ribs on the sidewall portions. Taylor was cited as showing a spacer formed of roll-formed metal.

Applicant respectfully traverses this rejection as well. In order to establish obviousness the prior art references must teach or suggest all limitations of the claims (MPEP 2143). As discussed above, Larsen fails to show frame tubing having a transverse wall portion which is configured to permit the sidewall portions to move alternately towards and away from one another as required by Applicant's independent claims 1 and 18. The Peterson and Taylor references add nothing that would teach or suggest this limitation: In both references, the transverse wall portion is solid and incapable of allowing such motion. Therefore, even if combined, the references fail to show all limitations of Applicant's claims 1 and 18. Dependent claims 13-17 and 28-33 include the limitations of claims 1 and 18 and are therefore likewise non-obvious over the cited references.

Since the cited references, even when combined, fail to teach or suggest the limitations of Applicant's claims, a *prima facie* case of obviousness has not been established. Applicant therefore respectfully requests that the rejection of the claims under 35 USC §103 be reconsidered and withdrawn.

c. Conclusion

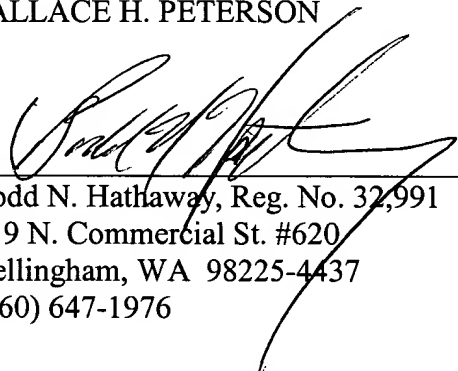
Applicant respectfully requests reconsideration of the present application in view of the amendments and remarks set forth herein. It is believed that the above-referenced claims are now in condition for allowance. If there is any matter that can be expedited by consultation with Applicant's attorney, such would be welcome. Applicant's attorney can normally be reached at the telephone number given below.

Signed at Bellingham, County of Whatcom, State of Washington this 18th day of November 2002.

Respectfully submitted,

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CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on the date shown below.

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Dale J. Perez
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